

REPRESENTATIVE FOR PETITIONER: Brian Meyer, *pro se*

REPRESENTATIVE FOR RESPONDENT: Marilyn S. Meighen, Attorney

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Meyer Creative Landscape,	)	Petition:	19-002-17-1-5-01565-17
	)		
Petitioner,	)	Parcel:	19-06-35-401-211.001-002
	)		
v.	)	County	DuBois
	)		
DuBois County Assessor,	)	Assessment Year:	2017
	)		
Respondent.	)		

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Appeal from the Final Determination of the  
Dubois County Property Tax Assessment Board of Appeals

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March 18, 2019

**FINAL DETERMINATION**

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**INTRODUCTION**

1. Brian Meyer argued that the subject property is over assessed because of gas and utility lines beneath the property. But he failed to support his claim with market based evidence. Thus, we order no change to the assessment.

**PROCEDURAL HISTORY**

2. Brian Meyer, as owner of Meyer Creative Landscape, filed a notice for review with the Dubois County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2017

assessment year. The PTABOA issued a determination valuing the property as follows:

<b>Year</b>	<b>Land</b>	<b>Improvements</b>	<b>Total</b>
2017	\$1,100	\$0	\$1,100

3. The Board’s designated Administrative Law Judge, Timothy Schuster, (“ALJ”) held a hearing on September 19, 2018. Neither he nor the Board inspected the property.
4. Brian Meyer represented Meyer Creative Landscape in his capacity as owner and testified under oath. Marilyn S. Meighen represented the Assessor. Angie Giesler testified for the Assessor.
5. The subject property is a 3,920 sq.ft. unimproved lot located in Jasper, Indiana.
6. The following exhibits were submitted:
  - Petitioner’s Ex. 4<sup>1</sup>: Aerial GIS map of the subject property.
  - Respondent’s Ex. A: Property record card (“PRC”) for the subject property,
  - Respondent’s Ex. B: Aerial GIS map of the subject property,
  - Respondent’s Ex. C: Photographs of the subject property,
  - Respondent’s Ex. D: Plat map and PRCs for Joseph Hasenour’s Fifth Addition,
  - Respondent’s Ex. E: Plat map and PRCs for Sunset Place,
  - Respondent’s Ex. F: Plat map and PRCs for Joseph Hasenour’s Sixth Addition,
  - Respondent’s Ex. G: Aerial GIS map and PRCs for neighboring parcels,
  - Respondent’s Ex. H: Warranty deed for the subject property.
7. The record also includes: (1) all pleadings, briefs, and documents filed in the current appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) a digital recording of the hearing.

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<sup>1</sup> Meyer only offered exhibit #4.

## OBJECTIONS

8. The Assessor objected to Petitioner's Ex. 4, a GIS map of the subject property, for failure to exchange. Meyer referenced a letter from the Assessor's counsel to him disclosing the Assessor's witnesses and exhibits. Meyer argued that if the Assessor's counsel could "write in loopholes," then he should be permitted to present his case. The Board's rules require parties to exchange evidence at least five business days before a hearing. Failure to do so may be grounds to exclude the evidence or testimony at issue. 52 Ind. Admin. 2-7-1. Meyer's failure to exchange is troubling, but we find that a GIS map, which the Assessor has access to, is not prejudicial. We overrule the Assessor's objection to Petitioner's Ex. 4 and admit it into evidence.
9. Meyer objected to Respondent's Ex. B, a GIS map of the subject property, based on the accuracy of the property line. Meyer's objection goes to the weight of the evidence rather than its admissibility. We overrule Meyer's objection and admit Respondent's Ex. B into evidence.
10. Next, Meyer objected to the Respondent's Exs. D, E, and F, plat maps and PRCs. He objected based on relevancy for exhibits D and E--arguing the documents were inaccurate or were not for the subject property. His objection to Respondent's Ex. F was unclear, but we assume he was making a similar objection. In response, the Assessor stated the exhibits were illustrating that other properties have utility lines, yet do not receive a value reduction or tax deduction. Relevancy is a low burden and we find these exhibits relevant. We overrule Meyer's objections to Respondent's Exs. D, E, and F and admit those exhibits into evidence.
11. Finally, Meyer objected to Respondent's Ex. G, a GIS map and PRCs of parcels near the subject property. Meyer argued that the map is inaccurate based on "scale" and "positioning." Again, this argument goes to the weight of the evidence rather than its admissibility. We overrule Meyer's objection and admit Respondent's Ex. G into evidence.

## CONTENTIONS

### a. Meyer's case

12. Meyer contends that his property assessment is too high. Specifically, he wanted a greater influence factor deduction because gas line, sewer line, and setback requirements from the City of Jasper limit the property's use. As proof, he offered a GIS map showing utility lines beneath the subject property. He felt the utility lines negatively impact the property's value because it limits the property's "usability" and "buildability." Meyer also commented that he could not find a record of the city buying a utility easement in the plat plan. He described the property's current use as a "wildlife tree grove." He requested a value of \$300 for the property. *Pet'r Ex. 4; Meyer testimony.*
13. Meyer also pointed out that the Assessor's plat maps were for front lots rather than rear lots. He felt these were not comparable to the subject. *Resp't Exs. D, E, F; Meyer testimony.*

### b. Assessor's case

14. The Assessor contends that the property's assessment is correct because properties typically do not receive an influence factor discount for utility easements. As evidence, the Assessor offered plat maps and PRCs for three different plat additions all of which contained utility easements, but did not receive influence factor deductions. *Resp't Exs. D, E, F.*
15. Giesler commented that the current influence factor deduction is the result of the subject property's irregular shape. The Assessor submitted PRCs for other rear lots near the subject property. The PRCs do not show an influence factor deduction. *Resp't Ex. G; Giesler testimony.*

## BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the

assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15- 17.2(a), (b), and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b). Meyer conceded that he bore the burden of proof. We agree with Meyer's concession and find that the burden of proof remains with him.

*Meyer testimony.*

### CONCLUSIONS OF LAW AND ANALYSIS

17. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c) and (e). It is instead determined under the DLGF's rules. I.C. § 6-1.1- 31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
18. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how his or her evidence relates to the relevant valuation date. *Long v. Wayne*

*Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.*

19. Meyer pointed to a number of factors that he believed negatively affected the value of the subject property. But simply pointing to deficiencies in the subject property is insufficient. Instead, a taxpayer needs to provide market based evidence that shows the assessment does not accurately reflect the subject property's market value-in-use. *Eckerling* at 677. Because Meyer did not provide that sort of evidence, his requested value of \$300 was unsupported.
20. The burden was on Meyer to walk the Board through the facts supporting his case and the Board will not make his case for him. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax. Ct. 2004). He did not, and as a result, he failed make a prima facie case. Thus, we order no change to the assessment.

#### **SUMMARY OF FINAL DETERMINATION**

21. Brian Meyer failed to make a prima facie case. The Board finds for the Assessor and orders no change to the 2017 assessment.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.